

TITLE 54
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 11
MORTICIANS, FUNERAL DIRECTORS AND EMBALMERS

54-1101. PUBLIC INTEREST AND CONCERN IN DISPOSITION OF HUMAN BODIES. The practice and processes involved in processing and making final disposition of human bodies is hereby declared to affect the public interest, health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the processes involved in preparing and making final disposition of human bodies should be so controlled as to protect the public interest and merit the confidence of the public, and to that end that only qualified persons be permitted to practice such acts in the state of Idaho. This act shall be liberally construed to carry out these objects and purposes.

[54-1101, added 1970, ch. 70, sec. 1, p. 167.]

54-1102. DEFINITIONS. As used in this act:

(1) "Board" means the state board of morticians of the state of Idaho or any successor thereof.

(2) "Bureau chief" means the chief of the bureau of occupational licenses.

(3) "Burial" means the interment or entombment of dead human bodies in any manner.

(4) "Cremains" means human remains after cremation.

(5) "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory.

(6) "Crematory" means a building or structure containing one (1) or more retorts for the reduction of bodies of deceased persons to cremated remains.

(7) "Columbarium" means a structure, room or other space in a building or structure containing niches for permanent inurnment of cremains.

(8) "Department" means the department of self-governing agencies of the state of Idaho.

(9) "Embalming" means the disinfecting, preparing or preserving for final disposition of dead human bodies, in whole or in part, or any attempt to do so, by the use or application of chemical substances, fluids or gases on the body, or by the introduction of the same into the body by vascular or hypodermic injection or by direct introduction into organs or cavities, or by any other method or process.

(10) "Establishment" means any funeral establishment or crematory establishment regulated by the board of morticians.

(11) "Funeral director" means any person engaged in or conducting, or holding himself out as engaged in or conducting, any of the following activities:

(a) Directing or supervising the burial, cremation or disposal of dead human bodies.

(b) Arranging for funeral services for dead human bodies.

(c) Selling funeral goods and services to the public.

(d) Conducting, directing or supervising a funeral service.

(12) "Funeral director license" means a yearly license issued by the board to act as a funeral director and perform funeral director services as defined in this chapter.

(13) "Funeral director services" means the services of a funeral director defined in subsection (11) of this section. Funeral director services do not include embalming.

(14) "Funeral establishment" means a place of business at a specific street address or location devoted to the embalming and care and preparation for burial or disposal of dead human bodies including all portions of such business premises and all tools, instruments and supplies used in the preparation and embalming of dead human bodies for burial or disposal, and including any chapel or other facility in which funeral or other religious services may be conducted.

(15) "Funeral establishment license" means a yearly license issued by the board authorizing the licensee to conduct a funeral establishment as defined in this chapter.

(16) "Funeral services" means any funeral or religious service conducted in connection with, or preparatory to, the burial or disposal of a dead human body.

(17) "Funeral supplies" means caskets, vaults, burial receptacles and any other personal property sold for use in the burial or disposal of a human body.

(18) "Human remains" means the body of a deceased person in any condition or state of decomposition including cremated remains.

(19) "Mortician" means any person engaged in or conducting, or holding himself out as engaged in or conducting, any of the following activities:

(a) Caring for or preparing dead human bodies for burial, cremation or disposal.

(b) Disinfecting or preparing dead human bodies by embalming, or otherwise, for funeral service, transportation, burial, cremation or disposal.

(c) Directing or supervising the burial, cremation or disposal of dead human bodies.

(d) Arranging for funeral services for dead human bodies.

(e) Selling funeral goods and services to the public.

(f) Conducting, directing or supervising a funeral service.

(20) "Mortician license" means a yearly license issued by the board to act as a mortician and perform mortician services as defined in this chapter.

(21) "Mortician services" means the services of a mortician defined in subsection (19) of this section.

(22) "Resident trainee" means a person who is engaged in preparing to become licensed as a mortician or funeral director, and who practices under the direct and immediate personal supervision of a licensed mortician pursuant to rules adopted by the board.

(23) "Resident trainee license" means a yearly license issued by the board to act as a licensed resident trainee and perform services under the direct personal supervision of a licensed mortician as defined in this chapter.

[54-1102, added 1970, ch. 70, sec. 2, p. 167; am. 1974, ch. 13, sec. 91, p. 138; am. 2003, ch. 257, sec. 1, p. 665.]

54-1103. PERSONS REQUIRED TO HAVE LICENSES. (1) It shall be unlawful for any person to perform, offer to perform or hold himself out as performing

mortician services or any of the acts of a mortician, unless he shall first obtain a mortician license or resident trainee license as provided in this chapter; and it shall be unlawful for a licensed resident trainee to perform mortician services or any of the acts of a mortician except under the personal supervision of a resident mortician licensed under this chapter.

(2) It shall be unlawful for any person to perform, offer to perform or hold himself out as performing funeral director services unless he has a funeral director license or resident trainee license as provided in this chapter.

(3) It shall be unlawful for any person to operate a funeral establishment or crematory without first obtaining the valid establishment licenses as provided in this chapter.

[54-1103, added 1970, ch. 70, sec. 3, p. 167; am. 2003, ch. 257, sec. 2, p. 668.]

54-1104. EXEMPTIONS FROM PROVISIONS OF CHAPTER. There is hereby exempted from the terms and provisions of this chapter and from the enforcement of the provisions hereof, the following:

(1) Manufacturers, wholesalers and jobbers of caskets, funeral supplies, vaults or other burial receptacles not engaged in performing mortician services and not selling to the public, except when said sales to the public are sales with immediate delivery of the funeral supplies purchased.

(2) Cemeteries selling vaults or burial receptacles to the public.

(3) Any duly authorized representative of any church, fraternal order or other association or organization honoring the dead who performs a funeral or other religious service under the authority of and pursuant to the religious tenets or practices of such organization. This exemption does not authorize, permit or allow such person to perform the functions of a mortician or funeral director under section [54-1102](#) (11) or (19), Idaho Code, unless he shall be licensed as required by law.

(4) Notwithstanding any other provision of law, the person having the right to control the disposition of the remains of the deceased person pursuant to section [54-1142](#), Idaho Code, or such person's designee, or a licensed funeral director, may initiate the process of cremation by operation of the retort while under the direct personal supervision of a licensed mortician.

[54-1104, added 1970, ch. 70, sec. 4, p. 167; am. 1972, ch. 113, sec. 1, p. 228; am. 1995, ch. 112, sec. 1, p. 381; am. 2003, ch. 257, sec. 3, p. 668.]

54-1105. BOARD OF MORTICIANS. (1) There is hereby established in the department of self-governing agencies a state board of morticians to be composed of three (3) members who shall be appointed by the governor and who shall serve at the pleasure of the governor in the manner hereinafter set forth. Two (2) members of the board shall be duly licensed morticians under the laws of the state of Idaho. Each shall be a resident of the state of Idaho for a period of at least five (5) years next preceding his appointment, during which time he shall have been continuously engaged in the practice as a mortician as defined in this chapter. One (1) member of the board shall be a member of the public with an interest in the rights of the consumers of mortuary services. No person shall be eligible for appointment to the board of morticians who is financially interested, directly or indirectly, in any em-

balming college, wholesale funeral supply business, or casket manufacturing business.

(2) The governor may consider recommendations for members of the board from the Idaho funeral service association, other statewide organization or association of licensed morticians whose membership is composed of a majority of all licensed morticians of the state or from any individual residing in this state.

(3) All members of the board of morticians shall be appointed to serve for a term of three (3) years, to expire on May 1 of the year of termination of their term, and until their successors have been appointed and qualified; provided however, the governor is hereby granted the power to alter the term of office of the members of the board first appointed hereunder so that the term of office of not more than one (1) member of the board shall terminate in any one (1) year. In case of a vacancy occurring on said board of morticians, the governor shall appoint a qualified member for the remainder of the unexpired term of the vacant office.

(4) The board shall meet, not less than annually, to elect a chairman and vice chairman and take official board action on pending matters by majority vote of all the members of the board of morticians, and in doing so a majority of the members of said board shall at all times constitute a quorum. Notice of any meeting shall be given by the chairman to all members of the board at least ten (10) days in advance of each meeting unless such notice is waived in writing by all of the members of the board.

(5) Each member of the board of morticians shall be compensated as provided by section [59-509](#)(m), Idaho Code.

[54-1105, added 1970, ch. 70, sec. 5, p. 167; am. 1974, ch. 13, sec. 92, p. 138; am. 1976, ch. 166, sec. 12, p. 605; am. 1980, ch. 247, sec. 58, p. 623; am. 2010, ch. 156, sec. 1, p. 331; am. 2016, ch. 340, sec. 13, p. 939; am. 2020, ch. 257, sec. 1, p. 743.]

54-1106. POWERS AND DUTIES OF BOARD. The state board of morticians shall have the following powers and duties:

(1) To prepare, conduct, and grade examinations of applicants for licenses.

(2) To certify the results of examinations of applicants and certify the applicant as having "passed" or "failed."

(3) To conduct hearings and proceedings in connection with the suspension or revocation of licenses.

(4) To make findings and recommendations to the governor on any and all matters relating to the enforcement of the provisions of this chapter.

(5) To perform all other duties and exercise all other powers granted under this chapter, or the laws of the state of Idaho.

(6) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

(7) To provide for the licensure and regular inspection of funeral establishments and crematories.

[54-1106, added 1970, ch. 70, sec. 6, p. 167; am. 1974, ch. 13, sec. 93, p. 138; am. 1996, ch. 174, sec. 7, p. 560; am. 2003, ch. 257, sec. 4, p. 669.]

54-1107. POWERS AND DUTIES OF BUREAU CHIEF. The chief of the bureau of occupational licenses, shall have the following powers and duties under this act:

A. To determine and pass upon the qualifications of applicants for all licenses under this act.

B. To issue all licenses provided for under the provisions of this act.

C. To annually renew licenses under this act.

D. To collect all fees prescribed and required herein.

E. To conduct hearings and proceedings for the suspension or revocation of licenses and to suspend or revoke any license for any of the causes hereinafter defined and set forth under this act; provided, however, that the bureau chief shall not revoke or suspend any license without first receiving written findings and recommendations from the board of morticians.

F. To keep general books of record of all official acts, proceedings and transactions of the board while acting under this act, including the following:

(1) A cash book showing in detail all receipts and disbursements for the board received or expended under this act.

(2) A special register containing the names and addresses of all applicants, the date the application was received, the result of the examination, and whether the applicant received a license or was rejected, and a full statement of the reasons therefor.

(3) All books of record kept shall be prima facie evidence of all matters therein recorded, and shall be public records.

G. To prescribe rules for the implementation and enforcement of the provisions of this act.

H. To publish and distribute copies of this act and the rules issued by the board to applicants, licensees and the public.

I. To perform all duties and exercise all powers granted under [chapter 3, title 27](#), Idaho Code.

[54-1107, added 1970, ch. 70, sec. 7, p. 167; am. 1974, ch. 13, sec. 94, p. 138; am. 1996, ch. 174, sec. 8, p. 560.]

54-1108. EXAMINATION OF APPLICANTS FOR LICENSE -- SUBJECTS -- CERTIFICATION OF RESULTS. The board of morticians shall have the sole power for determining the nature, type and extent of examinations to be taken by applicants for a license. Examinations for mortician applicants shall include generally the following subjects: anatomy, chemistry, physiology, psychology, sanitary science, the care, disinfection, preservation, transportation of and burial, or other final disposition of dead human bodies, and the laws and rules of the state of Idaho. Examinations for funeral director applicants shall include generally the following subjects: sociology, psychology, funeral directing, business law, funeral service law, funeral service merchandising, accounting, computers, and the laws and rules of the state of Idaho. The board shall determine whether the applicant has passed or failed such examination. Examinations may be written or as determined at the discretion of the board, and shall be held at such times and at such places within the state of Idaho as determined by the board of morticians. National conference examinations, passed at an accredited embalming college, may be accepted by the board. Upon the conclusion of grading the above examinations, the board of morticians shall certify the results listing each applicant as having failed or passed the examination, and such determination shall not be subject to review.

[54-1108, added 1970, ch. 70, sec. 7A, p. 167; am. 1974, ch. 13, sec. 95, p. 138; 1983, ch. 32, sec. 1, p. 81; am. 2001, ch. 136, sec. 1, p. 495; am. 2003, ch. 257, sec. 5, p. 669.]

54-1109. REQUIREMENTS FOR MORTICIAN LICENSE -- REQUIREMENTS FOR FUNERAL DIRECTOR LICENSE -- LICENSE BY ENDORSEMENT. (1) To qualify for a mortician license or funeral director license within the state of Idaho, a person must be twenty-one (21) years of age or older.

(2) The board shall issue to any person a mortician's license to practice as a mortician and perform mortician services within the state of Idaho who has complied with and fulfilled all of the following requirements:

(a) Has completed and received an associate degree from a mortuary school accredited by the American board of funeral service education.

(b) Has practiced as a licensed resident trainee in the state of Idaho under the personal supervision of a licensed resident mortician for not less than twelve (12) months, has assisted in embalming at least twenty-five (25) dead human bodies, has assisted in making at least twenty-five (25) funeral arrangements, and has assisted in conducting at least twenty-five (25) funerals; provided, however, such practice as a licensed resident trainee of the state of Idaho may be filled and performed either before or after the required post-high school education.

(c) Has filed an application with the board as required by this chapter and paid the required filing fee therefor.

(d) Has passed the required examination prepared and conducted by the board of morticians. Provided further, that the board shall determine compliance with all of the qualifications described in subsections (1) and (2) of this section, except this paragraph relating to examinations, at the time the applicant files his application as hereinafter provided and before the examination is conducted by the board of morticians.

(3) The board shall issue to any person a funeral director license to practice as a funeral director and perform funeral director services within the state of Idaho who has complied with and fulfilled all of the following requirements:

(a) Has completed and received at least forty-five (45) semester hours or sixty-eight (68) quarter hours of instruction from a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in the fields of liberal arts, business, or science as defined and specified by the board.

(b) Has successfully completed at least fifteen (15) semester credit hours or the equivalent from a mortuary college accredited by the American board of funeral service education, inc., or such credits as are otherwise approved by the board, with course of study to include business law, psychology, sociology, funeral service counseling, funeral service management, and other classes that relate to conducting funeral business.

(c) Has practiced as a licensed trainee in the state of Idaho under the personal supervision of a licensed mortician for not less than twelve (12) months and has assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals.

(d) Has successfully passed the required examination as established by the rules of the board. An applicant shall not be qualified to take the examination until all other requirements have been met.

(e) Has filed an application with the board as required by this chapter and paid the required fees.

(4) Any person holding a current, valid license in another state or territory having substantially similar requirements to those existing in this state may be granted a license without examination, provided:

(a) The applicant files with the board a certified statement from the examining board of the state or territory in which the applicant holds his license, verifying the license and showing the basis upon which the license was granted; and

(b) The applicant pays the license fee; and

(c) The applicant satisfies the board that he understands the laws and rules of this state as to funeral service.

(5) A person holding a current, valid license in another state or territory with requirements significantly lower than those of this state who has at least five (5) consecutive years of experience as a licensee in the other state or territory prior to application may apply for a license to practice in this state without meeting the full requirements of subsections (1) through (3) of this section. Upon payment of the license fee and passing such test of proficiency as the board shall require, including but not limited to a knowledge of the laws and administrative rules of this state as to funeral service, the board shall grant a license.

[54-1109, added 1970, ch. 70, sec. 8, p. 167; am. 1974, ch. 13, sec. 96, p. 138; am. 1978, ch. 166, sec. 1, p. 364; am. 1983, ch. 32, sec. 2, p. 82; am. 2003, ch. 257, sec. 6, p. 670; am. 2005, ch. 47, sec. 1, p. 178; am. 2008, ch. 109, sec. 1, p. 307; am. 2020, ch. 257, sec. 2, p. 744.]

54-1110. INACTIVE LICENSES. The board may issue inactive licenses to morticians and funeral directors pursuant to rules adopted by the board that may specify the terms, procedures and fees necessary to maintain an inactive license. The holder of an inactive license shall not engage in any practice requiring a license under this chapter.

[54-1110, added 2017, ch. 184, sec. 1, p. 423.]

54-1111. REQUIREMENTS FOR ESTABLISHMENT LICENSE -- CANCELLATION -- RECORDS -- OPERATION BY LEGAL REPRESENTATIVE OF ESTATE. (1) The board shall issue a funeral establishment license or crematory establishment license to any person, partnership, association, corporation or other organization, to operate at specific locations only, which has met the following requirements:

(a) That the applicant, if an individual, is a licensed mortician or funeral director under this chapter and is a resident of the state of Idaho.

(b) That the applicant has not been refused a license as a mortician or funeral director or its equivalent, or as an establishment or its equivalent, or had a personal or establishment license revoked in Idaho or in any other state.

(c) That the applicant has designated the name under which the establishment will operate and has designated a location for which the establishment license is to be issued.

(d) That the applicant has at least one (1) mortician licensed under this chapter who is a resident of the state of Idaho and who is, and will be, in the employ or service of the establishment.

(e) That the applicant has filed an application and paid the required filing fee. Provided further, that the board shall make the determination of qualifications of all applicants within a reasonable time after the filing of an application with the board. No establishment license shall be transferable, but an applicant may make application for more than one (1) establishment license as long as all of the requirements are met for each license.

(f) That the applicant for a crematory establishment license holds a current funeral establishment license in the state of Idaho.

(2) All applications for establishment licenses shall be in writing and shall contain the name of the applicant, the address and location of the establishment, and a description of the type of structure and equipment to be used in the operation of the establishment and such further information as may be required by the board to ensure the safe and sanitary operation of the establishment.

(3) The mortician responsible for the operation of an establishment shall maintain such records affecting the handling, custody, care, processing or transportation of human remains as may be required by the laws and rules of the state of Idaho and the board for all human remains received, prepared, cremated or otherwise disposed of by the establishment.

(4) In the event a licensed establishment ceases to have a resident full-time licensed mortician in its employ at its place of business, the licensed establishment must replace the full-time licensed mortician within ninety (90) days, or its license shall be canceled. This subsection shall not permit an unlicensed person to perform mortician services. The board may for good cause extend the time a licensed establishment has to replace a resident full-time licensed mortician.

[54-1111, added 1970, ch. 70, sec. 10, p. 167; am. 1974, ch. 13, sec. 98, p. 138; am. 2003, ch. 257, sec. 8, p. 672; am. 2020, ch. 257, sec. 3, p. 746.]

54-1112. REQUIREMENTS FOR RESIDENT TRAINEE LICENSE. The board shall issue to any person a resident trainee license to practice as a resident trainee and perform services at a particular establishment under the personal supervision of a specified licensed mortician within the state of Idaho who has complied with and fulfilled all of the following requirements:

(1) Has attained the age of eighteen (18) years, and is a resident of the state of Idaho.

(2) Is of good moral character.

(3) Has graduated from an accredited high school or has received an equivalent education as determined by the standards set and established by the state board of education.

(4) Has filed an application with the board as required by this chapter and paid the required filing fee. Provided further, that the board shall make the determination of qualifications of all applicants within a reasonable time after the filing of an application with the board. Provided further, no person shall be eligible to be licensed as a resident trainee for a total cumulative period of more than three (3) years in the state of Idaho unless approved by the board for good cause. The three (3) year limitation

includes all time practicing as a resident trainee or apprentice for a mortician license, funeral director license, or both.

[54-1112, added 1970, ch. 70, sec. 11, p. 167; am. 1974, ch. 13, sec. 99, p. 138; am. 2003, ch. 257, sec. 9, p. 673; am. 2009, ch. 72, sec. 1, p. 207; am. 2016, ch. 79, sec. 1, p. 258.]

54-1113. APPLICATION FOR LICENSE -- FORM AND CONTENTS -- CERTIFIED COPIES OF DOCUMENTS SHOWING QUALIFICATIONS. All applications for all licenses to be issued under the provisions of this act shall be filed with the board, together with the required filing fee, upon such forms as prescribed by the board of morticians, and shall contain statements of facts relating to each of the qualifications prescribed in this act for which the license is sought as well as any other information specified by the board of morticians. The board may require, as part of the application, certified copies of documents showing compliance with the requirements for the license sought by the application, including but not limited to certified copies of diplomas or graduation certificates from high schools, colleges and embalming colleges, certified copies of birth certificates, and certified copies of articles of incorporation. The application shall also list and describe the location of court records of any felony of which the applicant has been convicted in a court of law. All applications shall be signed by the applicant who shall verify the contents thereof under oath. All applications shall remain with the board and be a permanent record in that office.

Applications for the renewal of licenses shall be in such abbreviated form as prescribed by the board and shall require any information specified by the board of morticians.

[54-1113, added 1970, ch. 70, sec. 12, p. 167; am. 1974, ch. 13, sec. 100, p. 138.]

54-1115. LICENSE FEES. Any fee required pursuant to this chapter, including fees for original licenses, examinations, annual renewals, and certificates, shall be set by board rule. All fees shall be paid to the bureau of occupational licenses.

[54-1115, added 2020, ch. 257, sec. 5, p. 747.]

54-1115A. ANNUAL RENEWAL -- REINSTATEMENT. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section [67-2614](#), Idaho Code. In the event a licensee fails to renew a license as provided, the reinstatement fee shall be two hundred fifty dollars (\$250).

[54-1115A, added 2001, ch. 136, sec. 3, p. 496; am. 2003, ch. 21, sec. 8, p. 82.]

54-1116. DENIAL, SUSPENSION, OR REVOCATION OF LICENSES -- GROUNDS -- PROBATION. The board may refuse to issue or may refuse to renew or may suspend or may revoke any license, or may place the holder thereof on a term of probation, after proper hearing, upon finding that the holder of such license committed or is subject to any of the following acts or omissions:

(1) Conviction of a crime that reflects upon the qualifications, functions, or duties of the respective license. [that is deemed relevant in accordance with section 67-9411(1), Idaho Code]

(2) Unprofessional conduct, which is hereby defined to include:

- (a) Misrepresentation or fraud in the conduct of mortician or funeral director services;
- (b) False or misleading advertising as the holder of a license for the practice of mortician or funeral director services; advertising or using the name of a person who is not an employee of the establishment in connection with that of any establishment;
- (c) Solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs before death or after death; provided, that this shall not be deemed to prohibit general advertising;
- (d) Employment by the licensee of persons known as "cappers," or "steerers," or "solicitors," or other such persons to solicit or obtain agreements with the public for the performance of mortician services;
- (e) Employment, directly or indirectly, of any resident trainee, agent, assistant, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular mortician, funeral director or establishment;
- (f) The direct or indirect payment, or offer of payment, of a commission by the licensee, his agents, assistants, or employees for the purpose of securing business;
- (g) Gross immorality;
- (h) Aiding or abetting an unlicensed person to practice mortician or funeral director services;
- (i) Using profane, indecent or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relatives of a deceased whose body has not yet been interred or otherwise disposed of;
- (j) Violation of any of the provisions of this chapter;
- (k) Violation of any state law, or municipal or county ordinance, or rule authorized under this chapter affecting the handling, custody, care, processing or transportation of dead human bodies;
- (l) Fraud or misrepresentation in obtaining or renewing a license;
- (m) Refusing to promptly surrender the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof;
- (n) Solicitation or acceptance, directly or indirectly, of a request, before need, for an agreement to provide mortician services or funeral supplies at a price less than that offered by such person to others at time of need;
- (o) Violation of any statutes of any state having to do with prearrangement or prefinancing of mortician services or funeral supplies; and
- (p) Failing an inspection conducted by the board or the board's agent.

[54-1116, added 1970, ch. 70, sec. 15, p. 167; am. 1974, ch. 13, sec. 102, p. 138; am. 1994, ch. 95, sec. 1, p. 218; am. 2003, ch. 257, sec. 12, p. 674; am. 2020, ch. 175, sec. 18, p. 521; am. 2020, ch. 257, sec. 6, p. 747.]

54-1117. WRITTEN COMPLAINT -- PROCEDURE FOR SUSPENSION OR REVOCATION OF LICENSE. Upon a written complaint filed with the board of morticians the board shall cause to be held a hearing to determine whether a license of any person issued under this chapter should be suspended or revoked, or the issuance or renewal thereof refused, because of a violation of any of the causes set forth in the preceding section [54-1116](#), Idaho Code. The proceedings shall be governed by the provisions of [chapter 52, title 67](#), Idaho Code. Any person aggrieved by the action of the board shall be entitled to judicial review thereof in accordance with the provisions of [chapter 52, title 67](#), Idaho Code.

[54-1117, added 1970, ch. 70, sec. 16, p. 167; am. 1974, ch. 13, sec. 103, p. 138; am. 1993, ch. 216, sec. 61, p. 646; am. 2003, ch. 257, sec. 13, p. 675.]

54-1118. SENDING BODY TO AN ESTABLISHMENT WITHOUT INQUIRY PROHIBITED -- EXCEPTIONS -- ANATOMICAL GIFTS -- AUTHORITY REGARDING DISPOSITION. (1) It shall be unlawful for any public officer or employee, an official of any public institution, any physician or surgeon, or any other person who had a professional relationship with any decedent to send or cause to be sent to any establishment or mortician the remains of any deceased person without having first made due inquiry as to the desires of the decedent as expressed in any prearranged funeral plan as set forth in section [54-1139](#), Idaho Code, or of the person authorized to direct disposition of the remains under section [54-1142](#), Idaho Code.

No person licensed under this chapter or anyone acting on behalf of a licensee shall participate in any transaction or business which in any way interferes with the freedom of choice of the general public to choose a mortician or an establishment to perform the burial or disposal of a human body, except where the body or a part thereof is given for anatomical purposes.

Nothing herein contained shall be construed to govern or limit the authority of any administrator or executor, trustee, or other person having a fiduciary relationship with the deceased.

(2) No company, corporation or association engaged in the business of paying, or providing for the payment, of the expenses for mortician services or funeral supplies, or engaged in the business of providing insurance upon the life of any person for the payment of such expenses upon his death, shall pay any such insurance or benefits to any mortician, funeral director, establishment, or other person in any manner which might or could deprive the decedent as expressed in any prearranged funeral plan as set forth in section [54-1139](#), Idaho Code, or of the person authorized to direct disposition of the remains under section [54-1142](#), Idaho Code, from directing the method, manner and arrangements for the disposition of the remains.

[54-1118, added 1970, ch. 70, sec. 17, p. 167; am. 1994, ch. 423, sec. 6, p. 1331; am. 2003, ch. 257, sec. 14, p. 675.]

54-1119. AUTHORITY OF DEPARTMENT OF HEALTH AND WELFARE TO CONTROL HANDLING OF DEAD BODIES -- RULES AND REGULATIONS. The department of health and welfare shall have the jurisdiction to regulate, control and supervise the preservation, embalming, handling, transportation and burial or disposal of all dead human bodies and all methods preparatory thereto; and that said department is hereby authorized to make and enforce such rules and regulations

relating thereto as in its opinion are necessary to preserve and protect the public health.

[54-1119, added 1970, ch. 70, sec. 18, p. 167; am. 1974, ch. 13, sec. 104, p. 138.]

54-1120. RECEIVING BODY FOR TRANSPORTATION OUTSIDE STATE WITHOUT PERMIT PROHIBITED -- CREMATION AND REMOVAL OF HUMAN REMAINS. It shall be unlawful for any public transportation agent of any public transportation facility to receive a dead human body for shipment or transportation by any means of transportation or conveyance to or from any point in this state, or to a point outside this state, unless said embalmed human body is accompanied by a permit for final disposition signed by the individual authorized by law to certify the cause of death. Human remains shall not be delivered to a crematory or removed from the casket or other container without the written consent of the person giving the consent to the cremation of the body.

[54-1120, added 1970, ch. 70, sec. 19, p. 167; am. 1972, ch. 112, sec. 1, p. 227; am. 2003, ch. 257, sec. 15, p. 676.]

54-1121. ACCOUNTING PROCEDURE -- INCOME AND EXPENSES. All income and expenses received or incurred under the provisions of this act shall be itemized, validated, and audited and allowed by the chief of the bureau of occupational licenses.

[54-1121, added 1970, ch. 70, sec. 20, p. 167; am. 1974, ch. 13, sec. 105, p. 138.]

54-1127. INJUNCTION AGAINST VIOLATIONS OF ACT -- VENUE. The attorney general of the state of Idaho, the board, or any resident citizen may maintain an action in equity in their name or in the name of the state of Idaho to perpetually enjoin any person from persisting in the doing of any acts constituting a violation of this act or in failing to do any acts required by this act. Such action shall be brought in the district court of the county in which such acts or omissions, or some of them, are claimed to have been or are being committed, by filing a verified complaint. The court, or a judge thereof at chambers if satisfied from such complaint or by affidavits that the acts complained of have been or are being committed and will probably be persisted in, may issue a temporary writ, without notice or bond, enjoining the defendant from the commission of any such act or acts pending further hearing of the cause. The cause shall then proceed as in other cases for injunction.

[54-1127, added 1970, ch. 70, sec. 26, p. 167.]

54-1128. VIOLATIONS CONSTITUTING MISDEMEANORS -- EXCEPTIONS -- ENFORCEMENT. Any person who knowingly violates any provision of this chapter, or any licensee under this chapter who shall commit an act of unprofessional conduct as defined and designated under the provisions of subsection (2) of section [54-1116](#), Idaho Code, except paragraphs (g), (i), and (p) thereof, shall be guilty of a misdemeanor unless such conduct is punishable as a felony elsewhere under the law. It shall be the duty of the board of morticians to see that the provisions of this chapter are properly administered and enforced throughout the state, and all peace officers and prosecuting

attorneys shall aid in their several capacities in discharge of these duties.

[54-1128, added 1970, ch. 70, sec. 27, p. 167; am. 1974, ch. 13, sec. 108, p. 138; am. 2003, ch. 257, sec. 16, p. 676; am. 2020, ch. 175, sec. 19, p. 522; am. 2020, ch. 257, sec. 7, p. 748.]

54-1129. DECLARATION OF INTENT. It is the purpose of sections [54-1129](#) through [54-1138](#), Idaho Code, to provide for the certification of licensed funeral establishments selling or offering for sale prearrangement sales contracts, to provide for the creation and administration of prearrangement sales contract trust funds to assure funds for the performance to purchasers who contract through prearrangement sales contracts for the purchase of funeral and cemetery merchandise and funeral and cemetery services, and to provide for the disbursement and allocation of trust funds upon the certified seller's performance of its contractual obligations. The sections of Idaho Code specified herein shall not affect the provisions of sections [54-1101](#) through [54-1121](#) and sections [54-1127](#) and [54-1128](#), Idaho Code.

[54-1129, added 1989, ch. 138, sec. 2, p. 311; am. 2020, ch. 257, sec. 8, p. 748.]

54-1130. SCOPE AND EXCEPTIONS. (1) Sections [54-1129](#) through [54-1138](#), Idaho Code, apply to all establishments that sell or offer for sale prepaid funeral or cemetery merchandise or services.

(2) Sections [54-1133](#), [54-1134](#) and [54-1135](#), Idaho Code, do not apply to:

(a) Agreements to sell or sales made for rights of interment or entombment in a cemetery section, lawn crypt section, mausoleum or columbarium that are in existence at the time of initial payment on the contract; or

(b) Agreements to sell or sales made for monuments and grave markers that will be delivered and installed upon performance of payment.

[54-1130, added 1989, ch. 138, sec. 2, p. 311; am. 2020, ch. 257, sec. 9, p. 748.]

54-1131. DEFINITIONS. As used in sections [54-1132](#) through [54-1143](#), Idaho Code:

(1) "Beneficiary" means the person who is to receive the funeral or cemetery merchandise or funeral or cemetery services.

(2) "Certified seller" means any licensed funeral establishment that holds a certificate of registration or that is registered to sell or offer for sale prearrangement sales contracts.

(3) "Funeral or cemetery merchandise" means personal property normally and customarily sold by funeral establishments, cemeteries, and crematory establishments including, but not limited to, caskets or other primary containers, burial vaults, casket-vaults, grave liners, funeral clothing or accessories, monuments, grave markers and cremation urns. It shall include:

(a) Merchandise identified for the purchaser or the beneficiary to be manufactured for future delivery and use.

(b) Merchandise that has been manufactured and held by the manufacturer for future delivery and use.

(c) Merchandise that has been manufactured and delivered to and in the possession of the seller, who has placed it, until needed, in storage.

(4) "Funeral or cemetery services" means those services normally and customarily performed by a funeral service practitioner, mortician, funeral establishment, cemetery or crematory establishment in conjunction with funeral or memorial services, interment, entombment or cremation.

(5) "Guaranteed contract" means a written prearrangement sales contract that guarantees the beneficiary funeral or cemetery services or funeral or cemetery merchandise contained in the contract and under which no charges other than the sales price contained in the contract shall be required upon delivery of the merchandise or performance of the funeral and cemetery services.

(6) "Nonguaranteed contract" means a written prearrangement sales contract that does not guarantee the beneficiary any specific funeral or cemetery merchandise or services. Any funds paid under this contract are only a deposit to be applied toward the final cost of the funeral or cemetery merchandise or services.

(7) "Prepaid prearrangement sale or prearrangement sales contract" means any sale, other than a contract of life insurance entered into by an insurance company, that has as its purpose the furnishing of funeral or cemetery merchandise or funeral or cemetery services in connection with the final disposition or commemoration of the memory of a dead human body, for use at a time determinable by the death of the person or persons whose body or bodies are to be disposed and where the sale terms require payment or payments to be made at a currently determinable time.

(8) "Primary container" means a casket, rental casket, casket-vault, chapel-vault or other container that serves as the repository for dead human remains.

(9) "Public cemetery" means a cemetery owned and operated by a cemetery district organized under Idaho law, or by a municipal corporation or political subdivision of the state of Idaho.

(10) "Purchaser" means a beneficiary or a person acting on behalf of a beneficiary who enters into a prearrangement sales contract with a certified person under which any payment or payments made under the contract are required to be deposited in trust.

(11) "Secondary container" means a vault, grave liner, urn or other container purchased by the buyer for a burial or required by the cemetery that will be the repository for the primary container.

(12) "Trustee" means any bank, trust company or savings institution authorized to do business in the state of Idaho where accounts are insured with the federal deposit insurance corporation, the federal savings and loan insurance corporation or other similar agency of the United States government.

[54-1131, added 1989, ch. 138, sec. 2, p. 312; am. 1994, ch. 105, sec. 6, p. 236; am. 2003, ch. 257, sec. 17, p. 676; am. 2020, ch. 257, sec. 10, p. 749.]

54-1132. CERTIFICATE OF AUTHORITY -- REQUIREMENTS -- DISPLAY OF CERTIFICATE. (1) Effective July 1, 2021, no licensed funeral establishment may sell a prepaid contract or provide funeral or cemetery merchandise or funeral or cemetery services pursuant to a prepaid contract without first obtaining a valid certificate of authority. The holder of the funeral establishment license shall be responsible for the certificate of authority and any agent of the establishment who operates under the certificate of authority.

(2) A certificate of authority for public cemeteries shall be issued by the governing board, city council or board of county commissioners having overall supervision and control of the cemetery. A certificate of authority for privately owned cemeteries shall be issued by the Idaho board of cemeterymen. A certificate of authority for funeral establishments licensed under [chapter 11, title 54](#), Idaho Code, shall be issued by the state board of morticians and shall be renewed annually at the same time as the funeral establishment license is renewed.

(3) A licensed funeral establishment seeking to obtain a certificate of authority must submit a statement that includes the following:

- (a) The types of prepaid contracts to be written;
- (b) The name and address of the place of business of the licensed funeral establishment; and
- (c) Any information deemed necessary by the certifying authority to show compliance with section [54-1116](#), Idaho Code.

(4) Upon issuance, the certificate of authority shall be posted conspicuously in the licensed funeral establishment.

(5) The agent of any licensed funeral establishment holding a certificate shall present a copy of the certificate to the purchaser before engaging in the activity of selling a prearrangement sales contract.

(6) A licensed mortician or licensed funeral director shall designate the licensed funeral establishment that shall be responsible to provide any funeral or cemetery merchandise or funeral or cemetery services under prearrangement sales.

(7) The licensed funeral establishment designated as responsible to provide the merchandise and services under a prearrangement sales contract shall maintain all contracts and documents associated with any prearrangement sales.

[54-1132, added 1989, ch. 138, sec. 2, p. 313; am. 2003, ch. 257, sec. 18, p. 677; am. 2016, ch. 80, sec. 1, p. 259; am. 2020, ch. 257, sec. 11, p. 750.]

54-1133. FORM AND CONTENT OF CONTRACT -- PRICE DISCLOSURE. (1) Each contract shall be written in clear, understandable language and shall be printed or typed in an easy-to-read font, size, and style.

(2) Each contract shall identify the seller, the certificate of authority number the certified seller is working under, purchaser, and the beneficiary if other than the purchaser.

(3) Each contract shall specify the services and/or merchandise to be provided, as well as a statement of the law regarding substitution as provided in section [54-1137](#), Idaho Code.

(4) Each contract shall set forth the purchase price and the terms under which it is to be paid.

(5) Each contract shall conform to other state or federal regulations, including price disclosure. It is the contract seller's duty to comply with such regulations.

(6) Each contract shall state clearly whether it is a guaranteed price contract or a nonguaranteed price contract.

(7) Each contract shall state clearly whether it is a revocable or non-revocable trust.

(8) Each contract shall state the amount of money to be placed in trust and the name of the trustee, but the contract may provide that the certified

seller may designate a new trustee to obtain higher interest earnings on the trust funds.

(9) Each contract shall explain the disposition of the interest and include a statement of the fees, expenses and taxes that may be deducted from the interest pursuant to section [54-1134](#), Idaho Code, and a statement of the purchaser's responsibility for taxes owed on the interest.

(10) Each contract shall explain the purchaser's cancellation rights pursuant to section [54-1135](#), Idaho Code.

[54-1133, added 1989, ch. 138, sec. 2, p. 313; am. 2020, ch. 257, sec. 12, p. 750.]

54-1134. PREARRANGEMENT TRUST FUND DEPOSITS. (1) Within ten (10) business days of receipt, funds received by the certified seller in payments of the prepaid contract shall be deposited in trust as follows:

(a) Fifty percent (50%) of the amount received in payment for a marker, monument or secondary container shall be deposited with the trustee to be held in trust; provided however, the first fifty percent (50%) of the fifty percent (50%), or twenty-five percent (25%) of the total, may be collected, accounted for and applied to the certified seller's cost of purchase with the remainder to be deposited in trust. No amount need be held in trust for those items that are fully purchased by the certified seller and stored for the purchaser at the certified seller's expense in a bonded warehouse.

(b) Upon the sale of all other funeral or cemetery merchandise or services, there shall be deposited in trust the amount of eighty-five percent (85%) of the amounts received.

(2) Funds deposited in trust shall be identified in the records of the trustee by the name of the purchaser and beneficiary, and adequate records shall be maintained to allocate all earnings to each prearrangement sales contract. Nothing shall prevent the trustee from commingling the deposits in any such trust fund account for purposes of managing and investing the funds. A common trust fund account shall be identified by the name of the trustee.

(3) The certificating authority shall, as often as it deems reasonably necessary, examine the trust account, records, documents, and contracts. No less than annually, each certificating authority is required to file a certified audit report for each of its sellers, revealing the total amount of agreements or contracts executed by the seller during the preceding year, the total value of said contracts or agreements, the amount of money collected and paid in trust pursuant to said contracts or agreements, and the name of the trustee.

(4) The interest income from the trust on all contracts may be used to pay reasonable trustee fees and administrative expenses incurred in the administration of the trust and taxes. The certificating authority shall, by rule, establish a limit on the amount of fees and expenses that may be deducted from the interest income, and the trustee shall not exceed said limit.

(5) At the time of providing the services and/or merchandise, any interest income remaining after payment of trustee fees, administrative expenses and taxes shall be disbursed as follows:

(a) On a guaranteed-price prepaid contract, to the seller.

(b) On a nonguaranteed-price prepaid contract, to the purchaser or the purchaser's estate.

(6) Any certified seller engaging in prearrangement sales that enters into a combination sale that involves the sale of items subject to trust and any item not subject to trust shall be prohibited from increasing the sales price of those items not subject to trust with the purpose of allocating a lesser sales price to items that require a trust deposit.

[54-1134, added 1989, ch. 138, sec. 2, p. 314; am. 2020, ch. 257, sec. 13, p. 751.]

54-1135. CANCELLATION OF CONTRACT -- REFUND OF TRUST DEPOSITS. A. At any time prior to the death of the beneficiary under a revocable prearrangement sales contract trust, the purchaser may cancel the contract and be entitled to a refund of all payments made, plus accrued interest thereon, less reasonable administrative expenses and taxes incurred in the operation of the trust.

B. Prearrangement sales contracts which are irrevocable pursuant to the terms of such contract shall not be cancellable by the purchaser or by the beneficiary.

[54-1135, added 1989, ch. 138, sec. 2, p. 315.]

54-1136. SOLICITATION -- LIMITATIONS. (1) The right of a certified seller to lawfully advertise shall not be restrained, nor shall general advertising be prohibited.

(2) Advertising and marketing of prearrangement sales contracts is permitted provided that:

(a) The certified seller and its agents clearly identify themselves and their product.

(b) The certified seller and its agents show the certificate of authority as provided in section [54-1132](#), Idaho Code. If the marketing is by telephone, the certified seller and its agents must disclose the certificate of authority.

(3) Advertising and marketing of prearrangement sales contracts is permitted provided that any contract seller shall not:

(a) Directly or indirectly call upon or employ any agent, assistant, employee, independent contracting person, or any other person to call upon individuals or persons in hospitals, rest homes, or similar institutions for the purpose of soliciting prepaid contracts for making funeral or cemetery or final disposition arrangements without first having been specifically requested to do so by such person or by his next of kin.

(b) Solicit for dead human bodies for the purpose of providing funeral or cemetery services, final disposition, or cemetery or funeral merchandise when such solicitation occurs where death is reasonably pending or after death.

(c) Solicit or accept or pay any consideration for recommending specified persons to cause a dead human body to be provided funeral or cemetery services or funeral or cemetery merchandise, or the services of a crematory, mausoleum, or cemetery, except where such arrangement is subject to a prepaid contract.

(d) Be involved in solicitation that comprises an uninvited invasion of personal privacy at the personal residence of a person, unless the solicitation has been previously and expressly requested by the person solicited.

[54-1136, added 1989, ch. 138, sec. 2, p. 315; am. 2003, ch. 257, sec. 19, p. 678; am. 2020, ch. 257, sec. 14, p. 752.]

54-1137. SUBSTITUTIONS -- MERCHANDISE, SERVICES OR PROVIDER. (1) If the particular merchandise or service specified in the contract is unavailable at the time of delivery, the certified seller shall furnish merchandise and services similar in style and at least equal in quality of material and workmanship.

(2) The evaluation of quality shall be based on objective criteria.

(3) The person making arrangements for the funeral of the contract beneficiary shall choose the goods and/or services to be substituted and this choice must be reasonable based on the standards in subsections (1) and (2) of this section.

(4) If the certified seller is unable to provide merchandise and services or acceptable substitute merchandise or services under the terms of the contract, then the person responsible for arrangements for the funeral of the contract beneficiary may choose another provider and the funds in the trust shall be used to pay for the merchandise and services of the substitute provider.

[54-1137, added 1989, ch. 138, sec. 2, p. 316; am. 2020, ch. 257, sec. 15, p. 753.]

54-1138. ENFORCEMENT PENALTY -- DISCLOSURE OF CONTRACTS UPON SALE OF BUSINESS. (1) Sections [54-1129](#) through [54-1143](#), Idaho Code, shall be enforced by the Idaho state board of morticians or by the Idaho state board of cemeterians, depending upon whether the seller is a mortician/funeral director or cemeterian, who shall have authority to promulgate rules to enforce the provisions.

(2) Any person violating the provisions of sections [54-1129](#) through [54-1143](#), Idaho Code, shall be guilty of a misdemeanor unless such act is punishable as a felony elsewhere under law.

(3) No funeral service or funeral merchandise provider, be it funeral home or cemetery or third party seller, shall go out of business or sell a substantial part or all of its assets to any other person or firm without first disclosing the full particulars of all prearrangement sales contracts entered into by such seller, including the date of such contract, the purchaser thereof, the beneficiary, the amount of the trust, the name and location of trustee, and the merchandise or services to be provided under the terms of the contract.

[54-1138, added 1989, ch. 138, sec. 2, p. 316; am. 2003, ch. 257, sec. 20, p. 679.]

54-1139. INSTRUCTIONS FOR DISPOSITION OF PERSON'S REMAINS. (1) A person may provide written instructions as part of a prearranged funeral plan for disposition of the person's remains by any lawful means. The person shall execute the prearranged funeral plan, containing the instructions, as provided in section [54-1133](#), Idaho Code.

(2) As used in this section, "prearranged funeral plan" means a plan:

(a) For the final disposition of a person's remains; and

(b) That has been funded in advance of the death of the person leaving instructions for the disposition of that person's remains.

(3) A person, as part of a prearranged funeral plan, shall have the authority to sign all necessary or required forms, authorizations or agreements pertaining to the disposition of his remains including, but not limited to, a cremation authorization form.

(4) A person, as part of a prearranged funeral plan, may designate a person to make decisions regarding any substitutions under section [54-1137](#), Idaho Code.

(5) To the extent any provisions relating to the disposition of a person's remains are not clearly covered in a prearranged funeral plan, then the provisions of section [54-1142](#), Idaho Code, shall apply. The mere ownership of a burial plot, with or without a headstone or marker, does not constitute a prearranged funeral plan.

[54-1139, added 1994, ch. 423, sec. 1, p. 1329; am. 2009, ch. 51, sec. 1, p. 132.]

54-1140. PERSON'S DIRECTIONS TO BE FOLLOWED -- EXCEPTION. Unless a compelling public interest makes it impossible to comply with a person's direction as provided in section [54-1139](#), Idaho Code, the remains of a person must be disposed of as instructed in such instrument.

[54-1140, added 1994, ch. 423, sec. 2, p. 1330.]

54-1141. SURVIVOR'S SERVICES. The provisions of sections [54-1140](#) and [54-1142](#), Idaho Code, shall not prevent the deceased person's survivors from, at their own expense, pursuing alternate meaningful services and making arrangements for funeral services that do not conflict with the deceased's instructions for disposition.

[54-1141, added 1994, ch. 423, sec. 3, p. 1330; am. 2003, ch. 257, sec. 21, p. 679; am. 2009, ch. 51, sec. 2, p. 133.]

54-1142. AUTHORITY IN ABSENCE OF OR UNCOVERED PROVISIONS IN A PREARRANGED FUNERAL PLAN. (1) If the decedent has not made a prearranged funeral plan as set forth in section [54-1139](#), Idaho Code, or to the extent any provisions relating to the disposition of the person's remains are not clearly covered in a prearranged funeral plan, the right to control the disposition of the remains of a deceased person or to determine provisions not clearly covered in a prearranged funeral plan vests in, and devolves upon the following in the order named:

(a) The person designated in a written document executed by the decedent and acknowledged in the same manner as required for instruments conveying real property, and subject to such limitations, restrictions, or directions, as may be set forth in such document or, the person designated by the decedent as authorized to direct disposition as listed on the decedent's United States department of defense record of emergency data, DD form 93, or its successor form, if the decedent died while serving in military service as described in 10 U.S.C. 1481(a) (1) through (8) in any branch of the United States armed forces, United States reserve forces or national guard;

(b) The person designated as agent under a durable power of attorney for health care executed by the decedent, unless such durable power of attorney for health care contains express and clear language denying such right;

(c) The person designated in a durable power of attorney executed by the decedent, if such power of attorney contains express and clear language granting such right to the agent named in such power of attorney;

(d) The competent surviving spouse of the decedent;

(e) A majority of the competent surviving adult children of the decedent, provided that less than one-half (1/2) of the competent surviving adult children shall be vested with the right to control the disposition of the remains of the decedent if they have used reasonable efforts to notify all other competent surviving adult children of their instructions to dispose of the decedent's remains and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all competent surviving adult children;

(f) The competent surviving parents or parent of the decedent, provided that if one (1) of the competent surviving parents is absent, the remaining competent surviving parent shall be vested with the right to control the disposition of the remains of the decedent after reasonable efforts have been made and are unsuccessful in locating the absent competent surviving parent;

(g) The person appointed by a court of competent jurisdiction as the personal representative or administrator of the estate of the decedent;

(h) The person nominated as the personal representative of the estate of the decedent in the will of the decedent;

(i) The competent adult person or persons entitled to inherit from the decedent under the intestate succession laws of the state of Idaho, respectively in the next degree of kinship, provided that if there is more than one (1) competent surviving adult person of the same degree of kinship, the majority of those persons, and provided further that less than the majority of competent surviving adult persons of the same degree of kinship shall be vested with the right to control the disposition of the remains of the decedent if those persons have used reasonable efforts to notify all other competent surviving adult persons of the same degree of kinship of their instructions to dispose of the decedent's remains and are not aware of any opposition to those instructions on the part of one-half (1/2) or more of all competent surviving adult persons of the same degree of kinship;

(j) If the persons listed above fail to exercise their right to dispose of the remains of the deceased person within forty (40) days of the death of the deceased person, the person acting as guardian of the ward at the time of the ward's death, or if no guardian was then acting, the person acting as conservator of the protected person at the time of the protected person's death, has the authority to dispose of the deceased person's remains, including cremation of the remains.

(2) If any person to whom the right of control has vested pursuant to the foregoing has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death, and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next qualifying person as listed above as if the charged person did not exist; provided however, that if the charges against such person are dropped, or if such person is acquitted of the charges, the right of control is returned to the person.

(3) For purposes of this section:

(a) "Adult" means an individual who is eighteen (18) years of age or older;

- (b) "Child" means a natural or adopted child of the decedent;
- (c) "Competent" means the individual has not been declared incompetent by a court of law, or who has been declared competent by a court of law after a prior declaration of incompetence;
- (d) "Durable power of attorney" means a power of attorney described in section [15-12-102](#), Idaho Code, or any similar document properly executed under the laws of another jurisdiction;
- (e) "Durable power of attorney for health care" means the document described in [chapter 45, title 39](#), Idaho Code, or any similar document properly executed under the laws of another jurisdiction;
- (f) "Will" means any testamentary device which is valid under the Idaho probate code, including, but not limited to, sections [15-2-503](#), [15-2-504](#) and [15-2-506](#), Idaho Code, whether or not originally executed in, or under the laws of, the state of Idaho.

(4) (a) A cemetery authority or licensed funeral director or a licensed hospital or its authorized personnel may permit or assist in, and a physician may perform, an autopsy of any remains of a decedent in its custody:

- (i) If the decedent, prior to his death, authorizes an autopsy in his will or in another written instrument, including, but not limited to, a durable power of attorney for health care; or
- (ii) Upon the receipt of a written authorization signed by, telegraphed from, or received by facsimile transmission from, a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer; or
- (iii) Upon the receipt of an oral authorization obtained by telephone, and recorded on tape or other recording device, from a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer.

(b) A cemetery authority or a licensed funeral director of a licensed hospital or its authorized personnel is not liable for permitting or assisting, and a physician is not liable for performing, an autopsy pursuant to the authorization provided in paragraph (a) of this subsection unless he has actual notice that such representation is untrue at the time the autopsy is performed. If such authorization is contained in a will, the autopsy may be performed regardless of the validity of the will in other respects and regardless of whether the will may not be offered for, or admitted to, probate until a later date.

(c) This subsection shall not authorize the obtaining of an oral authorization by telephone, recorded on tape or other recording device, for the autopsy of a deceased person if it is made known to the physician who is to perform the autopsy that the deceased person was, at the time of his death, a member of a religion or group which opposes autopsies.

(5) Persons designated in subsection (1) of this section have a direct and tangible interest in the death certificate of a decedent pursuant to section [39-270](#)(b), Idaho Code.

[54-1142, added 1994, ch. 423, sec. 4, p. 1330; am. 2001, ch. 263, sec. 1, p. 964; am. 2005, ch. 120, sec. 6, p. 391; am. 2006, ch. 181, sec. 1, p. 560; am. 2008, ch. 186, sec. 3, p. 585; am. 2009, ch. 51, sec. 3, p. 133; am. 2010, ch. 43, sec. 1, p. 76; am. 2015, ch. 126, sec. 1, p. 319.]

54-1143. RIGHT TO RELY. (1) Any person signing a funeral service agreement or cremation authorization form or any other authorization for disposition, whether part of a prearranged funeral plan or at time of death, shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the deceased whose remains are sought to be buried or cremated and the signer's authority to order such disposition.

(2) A funeral establishment, cemetery or crematory establishment shall have the right to rely on such authorization and shall have authority to dispose of human remains upon the receipt of an authorization form signed by the decedent or by the person having the right to control disposition as set forth in section [54-1142](#), Idaho Code, or upon authorization by the county coroner pursuant to section [31-2802](#), Idaho Code. There shall be no liability of a funeral establishment, cemetery or crematory establishment that disposes of human remains pursuant to such authorization, or that releases or disposes of the remains pursuant to such authorization.

[54-1143, added 1994, ch. 423, sec. 5, p. 1331; am. 2003, ch. 257, sec. 22, p. 679; am. 2012, ch. 208, sec. 3, p. 563.]

54-1144. UNCLAIMED REMAINS OF VETERANS. (1) The division of veterans services may assume control over the cremated remains of a deceased person if:

- (a) The decedent's remains have not been disposed of pursuant to a prearranged funeral plan as set forth in section [54-1139](#), Idaho Code;
- (b) The persons vested with the right to control the disposition of the remains of a deceased person pursuant to section [54-1142](#), Idaho Code, have not made final arrangements for the disposition of the remains within one (1) year following the deceased person's death or have not exercised control over those remains for a period of one (1) year; and
- (c) The division of veterans services certifies that the deceased person is eligible for interment at a state veterans cemetery as an armed forces member pursuant to the rules of the state veterans cemetery.

(2) An Idaho chapter of a nationally chartered veterans services organization may assume control over the cremated remains of a deceased person if:

- (a) The decedent's remains have not been disposed of pursuant to a prearranged funeral plan as set forth in section [54-1139](#), Idaho Code;
- (b) The persons vested with the right to control the disposition of the remains of a deceased person pursuant to section [54-1142](#), Idaho Code, have not made final arrangements for the disposition of the remains within one (1) year following the deceased person's death or have not exercised control over those remains for a period of one (1) year; and
- (c) The Idaho chapter of a nationally chartered veterans services organization certifies that:

- (i) The deceased person is an armed forces member as defined in the rules of a state veterans cemetery;
- (ii) The Idaho chapter of a nationally chartered veterans services organization shall be solely responsible for the costs of interment, including the application for and receipt of any available governmental benefits.

(3) There shall be no liability of a funeral establishment, mortuary, cemetery, crematory, or a related entity, a licensed mortician, or licensed funeral director, or any employee or agent thereof who transfers the cremated remains of a deceased person to the division of veterans services or an

Idaho chapter of a nationally chartered veterans services organization pursuant to the provisions of this section.

(4) There shall be no liability of the state of Idaho or any employee or agent thereof related to the transfer of the cremated remains of a deceased person to an Idaho chapter of a nationally chartered veterans services organization or the interment of such remains pursuant to the provisions of this section.

[54-1144, added 2003, ch. 53, sec. 1, p. 194; am. 2018, ch. 66, sec. 1, p. 157.]